

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

PROFESSIONAL FIRE FIGHTERS OF)	
NEOSHO, LOCAL NO. 2861,)	
)	
Petitioner,)	
)	
vs.)	Public Case No. 82-001
)	
CITY OF NEOSHO, MISSOURI,)	
)	
Respondent.)	

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the Professional Fire Fighters of Neosho, Local No. 2861, filing a petition for certification as public employee representative of certain employees of the Neosho Fire Department. On May 3, 1982 a hearing was held in Neosho, Missouri, at which representatives of the Petitioner and Respondent were present. The case was heard by State Board of Mediation Chairman Mary Gant, Employer Member Herbert Shaw, and Employee Member Joseph Cointin. The State Board of Mediation is authorized to hear and decide issues concerning appropriate bargaining unit determinations by Section 105.525, RSMo 1978.

At the hearings the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Neosho Fire Department serves the City of Neosho, Missouri, and is also under contract to provide fire protection outside the Neosho city limits for the Neosho

Area Fire Protection District. The Neosho Fire Department employs approximately 16 full-time persons, consisting of a Fire Chief, three Captains, ten Driver/Fire Fighters, and one Secretary. An Assistant Fire Chief is employed on a part-time basis. This regular staff of employees is supplemented with an undetermined number of volunteer Fire Fighters.

The Fire Department currently operates from one fire station, with seven pieces of equipment. The station is staffed 24 hours a day, there normally being one Captain and three Drivers assigned on duty at all times. The Captains and Drivers work rotating 24-hour shifts, during which they reside at the fire station. The Fire Chief and the Secretary work eight-hour shifts, 40-hours per week, and are headquartered at the fire station. The Assistant Fire Chief has no set hours. At all times, either the Fire Chief or the Assistant Fire Chief is on call.

All scheduling of shifts is by the Chief. When a Driver is scheduled to work the Captain does not have the authority to excuse the Driver or to alter the Driver's schedule; consent of the Chief is required. The Chief often issues orders directly to the Drivers and Captains concerning in-house duties, such as housekeeping, maintenance, and other various duties. Otherwise, Captains are to have their men perform tasks outlined in a daily work log book. The Captains have not participated in any disciplinary action or any employee grievances, but these are instead handled directly by the Chief with the Driver involved.

The Captains participate in the same training that Drivers receive. All members of the department, including Drivers, suggest areas where training is needed to the Chief, who then determines what training will be supplied. Training is performed, at present, by a selected team of Drivers and volunteers. Evaluation of employees is done by the Chief. The Chief checks with Captains and fellow workers as to the performance of probationary employees. Traditionally, a review board has been used to screen new applicants. The review board was made up of Drivers, volunteers, and a Captain.

The Captain is in charge of a shift consisting of three Drivers. At the scene of a fire, the Captain is in command unless relieved by the Chief or Assistant Chief. If the Captain is absent from the scene, the number one Driver is in command and is not relieved by an off duty Captain who may be present, but only the Chief or Assistant Chief. The number one Driver is also in charge at the station if the Captain is sick or on holiday. He is responsible to see that all duties assigned to the shift, via the work log, are performed and bears all the same responsibilities as the Captain.

The Captains are treated in the same manner as Drivers in reference to access records. The Chief has under his personal and exclusive control all personnel records, all records regarding training, training manuals and films, equipment maintenance and purchases, fire alarm reports, and daily logs. When a Captain, or number one Driver, needs a form to make a report he must obtain the blank from the Chief.

The Secretary to the Fire Chief performs typing for the Fire Chief and the Assistant Fire Chief, and, if authorized, for other Fire Department personnel. She prepares various monthly, quarterly, and annual reports of the Fire Department, as well as purchase orders and payroll records. She receives employment applications, and administers initial tests to prospective Fire Fighters. She is not trained as a Fire Fighter, and does not go on fire runs.

CONCLUSIONS OF LAW

Professional Fire Fighters of Neosho, Local 2861 has petitioned to be certified as public employee representative for all regular full-time fire fighters employed by the City of Neosho, including the Captains and Department Secretary. The city objects to this unit contending the Captains and Secretary should not be included. The parties have stipulated that the Chief, Assistant Chief, and Volunteers are properly excluded from the unit. The parties have also stipulated that the Drivers are properly included in the unit.

The issue before the Board is whether the Captains and Secretary should be included in the unit with Drivers.

Respondent contends that the Board has no jurisdiction in this case because all the employees in question, except the Department Secretary, are Newton County Deputy Sheriffs and excluded thereby from Board certification by Section 105.510, RSMo 1978. The employees in question are employed by the city of Neosho as Fire Fighters. We have seen no evidence to suggest that any of these Fire Fighters are employed by Neosho, or anyone else, as Deputy Sheriffs, as the statute requires. A governmental unit may have a policy of requiring all its employees to swear-in as Deputy Sheriffs, but it is ridiculous to suggest that all those workers are employed as Deputy Sheriffs. In this case, the Fire Fighters are employed as just that and are not excluded from the Board's jurisdiction.

Respondent also suggests that the petition should be dismissed due to involvement of supervisory personnel in the Petitioner's organizational attempt. Respondent's claim presupposes two things: (1) that this Board has jurisdiction to determine unfair labor practices, and; (2) that participation by supervisors in organizational efforts is an unfair labor practice. Both are incorrect and the Respondent's challenge falls under its own weight.

An appropriate unit is defined by Section 105.500(1), RSMo 1978, as:

"a unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned,"

The Board has adopted a number of factors in determining whether employees have a community of interest. Service Employees International Union, Local No. 96, AFL-CIO, v. City of Blue Springs, Missouri, Public Case No. 79-031 (SBM 1979). The factor applicable in this case is the similarity of work performed.

Normally the Board would not weigh one factor so heavily, but in the case of including a Secretary in a bargaining unit with Fire Fighters, the incredible dissimilarity in work performed is sufficient proof of a lack of a clear and identifiable community of interest to prevent her inclusion in the unit. The secretary here is not trained as a Fire Fighter and does not accompany Fire Fighters on fire runs. She works a regular 8-hour shift and is never subject to the kind of danger and pressure that are synonymous with Fire Fighting. A non-Fire Fighting secretary has no community of interest with Fire Fighters and to include her in this bargaining unit would severely hamper her right to fair representation. Therefore, we exclude the secretary from the unit of Fire Fighters.

As stated in Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 SW2d. 581, 583 (Mo. App. 1977), it is the duty of the Board to identify employees whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees and to exclude these employees from the bargaining unit. In applying the above test the Board has consistently excluded supervisors from bargaining units of clearly non-supervisory employees. The Board has consistently looked to a number of factors in determining whether employees are supervisors. Western Missouri Public Employees, Local 1812 v. Jackson County, Department of Corrections, Public Case No. 90 (SBM 1977). The factors applicable here and analysis based on the facts and circumstances of this case are: (1) authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees; (2) authority to direct and assign the work force; (3) whether the supervisor is primarily supervising an activity or is primarily supervising employees; (4) the amount of independent judgment and discretion exercised in the supervision of employees.

There is no evidence that Captains have the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees. The Captains do

not participate in the disciplining of drivers, evaluation of employees is done by the Chief with input from all fellow workers, and all grievances are handled by the Chief.

The Captains primarily supervise an activity and not employees. The Captains lack of responsibility for grievances and discipline demonstrate a clearly task completion supervisory status.

The Captains are permitted very little independent judgment and discretion in supervising Drivers. Captains have no authority to schedule shifts, nor the authority to excuse a Driver or change his work schedule. At the fire scene, the Captain is in charge. However, fighting fires by trained personnel is a practice of following procedures that have been developed in training and as a result there is little need for direction of experienced Drivers at a fire. At the station, the Captain is responsible to perform tasks outlined in a daily work log. This function is often supplemented by direct orders from the Chief to Drivers. It is clear that normal areas of a supervisor's independent judgment such as basic discipline, basic grievance and schedule changes are all exclusively performed by the Chief and not the Captains.

This Board is reluctant to deny an employee's right to representation because of supervisory status unless it is clear from the record that the employee is a supervisor under our test. We conclude after the above analysis that the Captains in this case are not supervisors and are correctly joined into the bargaining unit with the Drivers.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows:

"All regular full-time Fire Fighters of the City of Neosho Fire Department; excluding supervisors, and all other employees of the City of Neosho Fire Department."

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or a designated agent thereof, among the employees in the unit found appropriate, as early as possible, but no later than sixty (60) days from the date below. The exact time and place will be set forth in the Notice of Election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately proceeding the date below, including employees who did not work during that period because of vacation or illness. Ineligible to vote are those employees who resigned or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether or not they desire to be represented by Professional Fire Fighters of Neosho, Local No. 2861 for the purpose of exclusive representation.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fourteen (14) days from the date of receipt of this decision, an alphabetical list of the names and addresses of employees in the unit determined to be appropriate who were employed during the designated payroll period.

Signed this 26th day of August, 1982.

STATE BOARD OF MEDIATION

(S E A L)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ Joseph Cointin
Joseph Cointin, Employee Member

/s/ Herbert Shaw
Herbert Shaw, Employer Member